

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

BILLY TRACY, #999607,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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CIVIL ACTION NO. 5:20-cv-156

JUDGE MICHAEL J. TRUNCALE

DEATH PENALTY

SCHEDULING ORDER

Petitioner Billy Tracy, through state habeas counsel, filed a motion (Docket No. 1) in this federal habeas corpus proceeding requesting the appointment of qualified counsel to represent Tracy in a challenge to his capital murder conviction and sentence of death. Qualified counsel, Mr. Ryan Gertz, was appointed to represent Tracy. Docket No. 3.

The Court is aware that the Texas Court of Criminal Appeals denied Tracy's state application for a writ of habeas corpus on September 30, 2020. *Ex parte Tracy*, No. WR-86,669-02, 2020 WL 5808144 (Tex. Crim. App. Sept. 30, 2020). The Court will set the deadline for filing the petition at one year from the issuance of the decision by the Texas Court of Criminal Appeals, although the setting of this date is not determinative of whether the petition is timely for purposes of the statute of limitations as established by AEDPA. *See Prieto v. Quarterman*, 456 F.3d 511, 514–15 (5th Cir. 2013). The parties should assure themselves that their filings are timely under applicable law and procedural rules. The Court will examine the petition for timeliness once all pleadings and the state court records are filed. It is therefore

ORDERED that on or before September 30, 2021, Tracy shall file, and serve on the Criminal Appeals Division of the Office of the Texas Attorney General, his federal habeas corpus petition in this cause. Tracy's petition shall (1) comply in all respects with Rule 2(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* and (2) set forth the factual and legal basis for all grounds for federal habeas corpus relief under Title 28 U.S.C. §2254 that Tracy wishes this Court to consider in connection with his capital murder conviction and sentence of death. The case may be dismissed for want of prosecution if the petition is not timely filed. It is

ORDERED that the Director shall file his answer or other responsive pleading to Tracy's federal habeas corpus petition on or before ninety days after receipt of Tracy's federal habeas corpus petition. The Director's answer or other responsive pleading shall conform to the requirements of Rule 5 of the *Rules Governing Section 2254 Cases in the United States District Courts* and Rule 12 of the *Federal Rules of Civil Procedure*. The Director shall serve Tracy's counsel of record with a copy of said answer or other responsive pleading in accordance with the provisions of Rule 5(b) of the *Federal Rules of Civil Procedure*. It is further

ORDERED that the Director shall clearly and directly respond to the issue of whether Tracy has exhausted available state remedies with regard to each of the grounds for federal habeas corpus relief set forth in Tracy's federal habeas corpus petition. If the Director denies that Tracy has exhausted available state remedies with regard to each ground for federal habeas corpus relief set forth in Tracy's petition, the Director shall explain, in detail, those state remedies still available to Tracy with regard to each such unexhausted claim. In the event that the Director wishes to assert the defense that Tracy has procedurally defaulted on any ground for relief contained in Tracy's federal habeas corpus petition, the Director shall explicitly assert that defense and identify with specificity which of Tracy's grounds for relief the Director contends are procedurally

defaulted from consideration by this Court. The Court would appreciate receiving briefing on the merits of any allegedly procedurally defaulted claims. It is

ORDERED that in the event the Director wishes to assert the defense that Tracy has failed to file this federal habeas corpus action within the one-year statute of limitations set forth in Title 28 U.S.C. §2244(d), the Director shall explicitly assert that defense and identify with specificity the date on which the one-year limitations period applicable to Tracy's federal habeas corpus petition began to run and all time periods, if any, during which that limitations period was according to the State Court Records. On or before thirty days after the date the Director files his answer or other responsive pleading in this cause, the Director shall submit to the Clerk of this Court true and correct copies of all pertinent state court records from Tracy's state trial, direct appeal, and state habeas corpus proceedings. In the event that Tracy asserts a claim or claims for relief premised upon alleged violations of the rule announced in *Batson v. Kentucky*, 476 U.S. 79 (1986), the Director shall include copies of all juror questionnaires answered by any and all members of the jury venire from which Tracy's petit jury was selected. It is further


ORDERED that on or before thirty days after the date the Director serves Tracy's counsel of record with a copy of the Director's answer or other responsive pleading, Tracy shall file any reply he wishes to make to the Director's answer or other responsive pleading. It is

ORDERED that on or before thirty days from the date of this Order, Tracy shall either (1) pay the five-dollar filing fee in this cause to the Clerk of Court or (2) file a completed application for leave to proceed *in forma pauperis*, including a certified copy of Tracy's inmate trust account statement available from the law librarian at his TDCJ facility. Tracy is advised that his court-appointed counsel is not required to accept collect telephone calls from him or any person acting

on his behalf and that said counsel is not required to expend said counsel's own funds to investigate any claim or potential claim in this cause. It is finally

ORDERED that the Clerk shall send a copy of this Order via first class mail with a receipt acknowledgment card enclosed or attached to Billy Joel Tracy, #0999607, at the Polunsky Unit. All pleadings, motions, and other documents filed in this cause shall conform in all respects to the Court's Local Rules.

SIGNED this 6th day of November, 2020.

A handwritten signature in cursive script, reading "Michael J. Truncale", positioned above a horizontal line.

Michael J. Truncale
United States District Judge